

Frequently Asked Questions about Administrative Rule 9

1. **Our office has just received a document for filing that was not prepared by the attorney or party, and has confidential information scattered throughout. How should we handle this?**
 - A. Parties filing documents should be strongly encouraged to comply with both the spirit and the plain language requirements of Trial Rule 5(G). However, it may be the case that a document such as a police incident report, which the filing party is not generating themselves, may contain confidential information so scattered through the document as to render redaction difficult. In this case, place a green cover page over the document and place it in the non-public portion of the case file. This may also occur with medical reports from physicians, or other documents from outside providers who are either unaware, or are unconcerned with our green paper requirement.
2. **Can we use a “CONFIDENTIAL” stamp for documents or must we invest in a special stamp as indicated by the rule that reads “NOT FOR PUBLIC ACCESS”.**
 - A. Common sense should be your guide on these sorts of questions. As long as all staff know what “CONFIDENTIAL” means when it is on a document or envelope, it will suffice for the purposes of AR9 and TR5(G).
3. **What status does a redacted copy of a document have with respect to the case file or the RJO?**
 - A. A redacted copy is just that – a copy. The original document may be an un-redacted version, or it may be a redacted version with an attachment containing all of the confidential information. Original filings or original orders should never be changed, **only the copies**. For the purposes of AR9, a redacted copy of a court order can be clearly stamped “COPY” and placed in the public RJO, while a complete copy with the confidential information (either in the order or on an attachment) should be maintained in either a confidential RJO or other storage medium.
4. **We have always operated with the understanding that court orders should be produced on bond paper for archival recordkeeping purposes. How does the green paper requirement impact the use of bond paper?**
 - A. Trial Rule 77(J) does set forth a requirement that orders to be placed in the RJO should be created on bond paper. However, the interpretation of this requirement is that it does not extend to those things deemed not for public access and created on light green paper. As a result, orders or portions of orders created on green paper are not subject to the bond paper requirement. Additional examination is being made of this particular requirement and may result in some amendment to TR 77(J).

5. **The RJO is supposed to contain only original orders. How can a redacted order ever be put into an RJO? Do we have to have the judge sign multiple copies and versions of an order to permit having redacted orders in the RJO?**
 - A. No. A major focus of Administrative Rule 9 is to make as much information publicly available as possible. The correct procedure for the court and clerk to take in these situations is to create the court's original order which is signed by the judge. This original order may be on green paper with confidential information contained in it, or it may be on white paper with a green sheet attachment that contains the confidential information. In either situation, the original order, complete with confidential information, should be placed in the confidential RJO. A redacted copy of the order, or a copy of the order without the confidential attachment should be stamped "COPY" or "REFERENCE COPY" and be placed in the public RJO so that the public has an opportunity to locate and see this order.
6. **Attorneys have raised the issue that they are clearly liable to failing to redact confidential information from documents and pleadings. Is this true?**
 - A. Administrative Rule 9 makes no determination of whether attorneys are liable for failing to redact confidential information or not. Administrative Rule 9 does provide limited immunity for clerks and their staff who unknowingly and unintentionally release confidential information. Presumably, attorneys should be aware of what they are filing with the court and should be in the best possible position to make a determination of what is confidential and what is not. No instance of attorney liability under this theory has generated a definite opinion from the Supreme Court at this time.
7. **There still seems to be some confusion in my county about when addresses and complete dates of birth may be used in pleadings or documents filed with the court.**
 - A. Addresses and complete dates of birth are restricted only for victims and witnesses of particular case types. The restrictions on address do not apply to businesses or other legal entities, only to people. Complete dates of birth are defined to include month, day, and year. Both of these data elements are publicly accessible in civil case files as well as cases that do not fall under the list specified in Administrative Rule 9. A year of birth without the month and day is permissible to have in the public case file even for victims and witnesses.
8. **The new Administrative Rule 9 seems to add a lot of new things that are confidential. How do we get through all of these new items?**
 - A. As a general rule, things that were confidential before January 1, 2005, are still confidential. Although Administrative Rule 9 created a few new categories of confidential information, three main areas are significant new changes. First, social security numbers are confidential in all cases at all times (although the last four digits of a social security number are not considered to be confidential). Second, addresses, full dates of birth, and phone numbers for victims and witnesses of certain cases are now excluded from public access. Finally, account numbers (meaning bank accounts, mutual funds, mortgage loan numbers, and credit card numbers, generally) are excluded from public access.

- 9. I've heard a rumor that exhibits and evidence offered in court are treated differently than exhibits attached to pleadings. What is the difference?**
- A. Exhibits offered in a public proceeding, such as a hearing or trial, are exempt from the provisions of Administrative Rule 9 at the present time. The Division of State Court Administration is continuing to review this, but Social Security Numbers, account numbers, addresses of victims and witnesses, and other items deemed confidential in AR9 do not have to be redacted or otherwise restricted if they become evidence in a public proceeding. Exhibits that are attached to pleadings and filed with the court or clerk must still comply with AR9 and TR5(G).
- 10. Are driver's license numbers or other identification numbers restricted under AR9?**
- A. Driver's license numbers, Vehicle Identification Numbers (VIN's), military identification numbers, or any other identifying number are all publicly accessible. The restrictions in AR9 relate specifically to Social Security Number, which is the complete 9-digit number.
- 11. In collections cases, it is necessary to file a proof of claim which may be a hospital bill with a patient billing number. Is the patient billing number considered to be part of the account number restrictions?**
- A. Patient billing numbers were not part of the account number restriction when the Task Force recommended this provision to the Supreme Court. Account numbers were intended to include accounts that would be subject to theft through Internet access, and included things such as checking accounts, savings accounts, mutual fund accounts, and credit cards. Patient identification numbers are not included in this category. In store credit accounts, such as an in store account at Joe's Hardware Store, could also be part of the public record and would not have to be redacted.
- 12. What if my proof of claim requires me to attach a check that someone bounced?**
- A. The account number on the check needs to be redacted or the check should be copied on green paper. An alternative would also be to place the check or the check copy in an envelope that is clearly labeled with the cause number and identifying what is contained in the envelope, and attach the envelope to the pleading so that the court/clerk staff can segregate the check from the other public documents in the case file.
- 13. What portion of tax warrants are confidential and when should they be restricted from public access?**
- A. Tax warrants received from the Department of Revenue and filed in the Clerk's office are not considered to be court records and therefore are not subject to the provisions of Administrative Rule 9. When a collection action is filed on the tax warrant as an individual case, the tax warrant then becomes subject to AR9 and must be redacted to ensure that Social Security Numbers are not part of the public filing.

- 14. Can I object to evidence being offered at trial based on the fact that it contains confidential information and has not been redacted appropriately by the party offering the evidence?**
- A. If the evidence is relevant and otherwise admissible, it should come in to the proceeding. Administrative Rule 9 does not provide a basis for an objection to evidence, although it is possible that a party taking issue with confidential information being entered into the public record could ask the judge to consider restricting access to that information. In this regard, the information is treated no differently than it would have been treated before January 1, 2005, when a party could have asked a judge to seal information and remove it from the public record of the case.
- 15. If a juvenile gets a traffic ticket, is that case considered to be a juvenile case and does it then become automatically confidential?**
- A. No. The case would be assigned a number based on the type of offense/case (ie. IF, OV, etc.). There is no need to maintain any level of confidentiality for this case type just because the offender is a juvenile.
- 16. How should warrants and subpoenas be handled in light of the confidentiality restrictions in AR9?**
- A. Addresses of victims and witnesses should be redacted and placed on an attached green sheet. There are some common sense exceptions, however. Suppose that a subpoena is being issued for Patrolman John Smith addressed to the Smallville Police Department. It would not be necessary to redact "Smallville Police Department" from the document. If the subpoena were being sent to Patrolman John Smith's home address, the address would need to be redacted and put on an attached green sheet. Warrants should be handled in the same fashion. It may be more expedient for courts to reformat their warrants so that Social Security Number is placed on the last page (which can then be made green), and which can be separated from the public case file easily.
- 17. Our prosecutor files incident reports and NCIC reports with his pleadings. These attachments contain a lot of information that is deemed confidential under AR9. How should these be filed?**
- A. It may be the case that redacting the information on an incident report or an NCIC report is difficult and cumbersome. Assuming that the other pleadings that the prosecutor is filing have sufficient information to identify what the person is being charged with and what the basis for that charge is, an incident report or NCIC report can be filed entirely on green paper, or could have a green cover sheet attached to it to identify it as confidential. At least in the case of the incident report, the investigating police agency generally has those documents available and would be the official repository of that information for access purposes anyway.

- 18. We have gotten mixed messages about the IH-6 and other probate related documents like a will with the decedent's social security number in it. How should these things be handled?**
- A. The IH-6 should be filed on green paper, despite the fact that many counties already segregate the IH-6 from the court estate file. Decedent Social Security Numbers are made public by the Social Security Administration after death, so there is no harm in filing documents with that identifier un-redacted. In terms of other estate documents that may contain account numbers or Social Security Numbers of heirs, those items should be redacted pursuant to the requirements of Trial Rule 5(G). Orders determining inheritance tax due are also confidential by statute.